

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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DAVID CHAVEZ, *individually and on behalf of all:*  
*other similarly situated,* :  
Plaintiff, : Case No. 1:17-cv-01948  
: Hon. John J. Tharp, Jr.  
- against - :  
CHURCH & DWIGHT CO., INC. :  
Defendant. :  
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**NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant, Church & Dwight Co., Inc. (“Church & Dwight”), by and through its attorneys, Proskauer Rose LLP, respectfully submits this Notice of Supplemental Authority to bring to the Court’s attention the attached decision issued yesterday by the Honorable Judge Otis D. Wright, II in a case against Church & Dwight that is virtually identical to the one pending before this Court. *See Ochoa v. Church & Dwight Co.*, Case No. 5:17-cv-02019 (C.D. Cal.) (attached as Exhibit 1). Church & Dwight moved to dismiss the complaint in *Ochoa* on the same preemption grounds set forth in the motion to dismiss pending before this Court. The *Ochoa* court dismissed on preemption grounds (with leave to amend), but then stayed the action pursuant to the doctrine of primary jurisdiction, relying upon the FDA’s commentary to proposed regulations. Ex. 1 at 16-17 (*quoting* Food Labeling: Revision of the Nutrition and Supplement Facts Labels, 81 Fed. Reg. 33742, 33964–65 (May 27, 2016)). Judge Wright specifically found that “this commentary is an indication that the FDA is contemplating additional guidance on the issue.” *Id.* at 17. For the same reasons relied upon by the court in *Ochoa*, we urge that the motion to dismiss pending before this Court be granted.

Dated: January 31, 2018

Respectfully submitted,

**PROSKAUER ROSE LLP**

By: /s/ Kristen Jones

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*Attorneys for Defendant Church & Dwight Co., Inc.*

**CERTIFICATE OF SERVICE**

I, Kristen Jones, hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document via the Court's CM/ECF system on this 31st day of January, 2018.

/s/ *Kristen Jones*  
Kristen Jones